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Technical assistance and capacity-building

Technical assistance for Libya in the field of human rights

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 22/19, reflects the human rights-related challenges and needs in Libya and the technical support and capacity-building activities conducted by the Office of the United Nations High Commissioner for Human Rights through the United Nations Support Mission in Libya to address such needs, in cooperation with the Government of Libya, civil society, United Nations specialized agencies, funds and programmes and international, regional and subregional organizations.

The report highlights the importance of supporting the ongoing efforts of the Government of Libya to build the capacity of institutions dealing with human rights, transitional justice and the rule of law. It provides recommendations to the Government on establishing a robust legal framework, strengthening national human rights bodies, ensuring effective administration of justice, developing comprehensive transitional justice processes and addressing the needs of social groups.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 22/19, adopted on 21 March 2013, in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) "to prepare a written report, for submission to the Human Rights Council at its twenty-fifth session, reflecting human rights regarding the technical support and capacity-building needs of Libya, with a view to strengthening the promotion and protection of, and respect for, human rights and fundamental freedoms and exploring ways of cooperation to overcome the challenges in the areas of security, respect for the rule of law, transitional justice and human rights".

II. Background

2. Libya is undergoing a difficult transitional period, as it emerges from four decades of large-scale human rights violations and an intensive armed conflict in 2011 which overthrew the regime of Colonel Muammar Qadhafi, coupled with the collapse of security structures and State institutions. Security has continued to be a predominant concern against a backdrop of substantial political and criminal violence. The armed brigades which emerged during the conflict have increased in size since the end of the conflict in 2011 and exert considerable political and military power. The majority of the brigades are nominally affiliated to the Government but operate with effective autonomy. Despite the efforts of the Government to establish stability and the rule of law, unrest continues with targeted assassinations of State officials, particularly in Benghazi, and further incidents of violence in Tripoli and other parts of the country, reflecting an ongoing power struggle among the brigades and illustrating the major difficulties the Government faces in asserting its control and authority over the whole country.

3. On 25 February 2011, the Human Rights Council adopted resolution S-15/1, in which it decided to dispatch urgently an independent, international commission of inquiry to Libya to investigate all alleged violations of international human rights law. The International Commission of Inquiry presented its first report to the Council on 1 June 2011[1] and its final report on 8 March 2012.[2] In its resolution 22/19, the Human Rights Council took note of the final report and encouraged the Government of Libya to implement fully the recommendations contained therein.

4. On 16 September 2011, in resolution 2009 (2011) the Security Council established the United Nations Support Mission in Libya (UNSMIL). On 14 March 2013, the Security Council adopted resolution 2095 (2013), in which it decided that the mandate of UNSMIL, in full accordance with the principles of national ownership, should be to support Libyan efforts in a number of areas, including to "promote the rule of law and monitor and protect human rights, in accordance with Libya's international legal obligations, particularly those of women and people belonging to vulnerable groups, such as children, minorities and migrants, including through assisting the Libyan Government to ensure the humane treatment of and due process for detainees and to reform and build transparent and accountable justice and correctional systems, supporting the development and implementation of a comprehensive transitional justice strategy, and providing assistance towards national reconciliation as well as support to ensure the continued identification, separation and reintegration of children affected by armed conflict". In fulfilment of the

[1] A/HRC/17/44.

[2] A/HRC/19/68, advance unedited version only.

human rights mandate of UNSMIL, its Human Rights, Transitional Justice and Rule of Law Division was established from the outset. The Director of the Division represents the United Nations High Commissioner for Human Rights in Libya.

5. In February 2013, an international ministerial meeting on support to Libya in the areas of security, justice and rule of law was convened in Paris. The meeting was preceded by a senior officials meeting held in London in December 2012. During the meeting in Paris, the Government of Libya presented its priorities for the development and reform of the security, rule of law and justice sectors. The participants issued a communiqué and adopted the National Security Development Plan and the Justice and Rule of Law Development Plan, to be implemented by the Government of Libya with the assistance of the international community. The meeting welcomed the coordination role and the technical support provided by UNSMIL.

6. In early 2014, the country is expected to elect a 60-member Constitution Drafting Assembly. The new constitution, drafted by the Assembly, is due to be adopted by a referendum, which is to be followed by general elections in the same year.

7. Despite positive developments, such as the establishment of a national human rights institution, the National Council for Civil Liberties and Human Rights, and the establishment of a Human Rights Committee within the General National Congress, the criminal justice system is not yet fully functional and the security sector requires major reform.

8. Libya is a party to the core international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Child and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. It has also ratified the first Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict. Libya is also a party to the African Charter on Human and Peoples' Rights, but has not yet ratified, inter alia, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, or the 1951 Convention relating to the Status of Refugees and its Optional Protocol. In 2013, Libya ratified the Convention on the Rights of Persons with Disabilities, although it has not yet deposited the instrument of ratification.

9. Libya will undergo its second review by the Working Group on the Universal Periodic Review in 2015. Under the Qadhafi regime, special procedures of the Human Rights Council were denied access to the country. Since the transition, visits by the Working Group on Enforced or Involuntary Disappearances and the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination were planned for May 2013 but had to be postponed for security reasons. The Human Rights, Transitional Justice and Rule of Law Division of UNSMIL has provided technical advice to the human rights section of the Ministry of Foreign Affairs on engagement with, and reporting to, the human rights treaty bodies, the universal periodic review and the special procedures of the Human Rights Council. The High Commissioner has been invited by the Government to conduct an official visit to Libya.

III. Human rights priorities and technical support

A. Groups in focus

1. Women

10. Women in Libya are facing challenges in ensuring their fair participation in public, constitutional, and transitional justice processes. Six seats out of 60 have been assigned to women in the Constitution Drafting Assembly, which is due to be elected in 2014 and women may stand for election for the remainder of the seats. The capacity of national institutions and civil society to contribute to the protection of women's rights is limited.

11. In May 2013, the Minister of Justice submitted a draft law on the care of women victims of rape and violence to the General National Congress, as current legislation does not ensure adequate protection in this regard. It foresees the provision of reparations, including compensation, health care, psychosocial support and shelter. It also provides for legal aid to enable victims to bring the perpetrators of crimes to court. The law would also apply to male victims.

12. In association with the Women's Empowerment Section of UNSMIL, the Human Rights, Transitional Justice and Rule of Law Division has provided advice to the General National Congress and the Ministry of Justice on the above-mentioned draft legislation and on the promotion and protection of the rights of women in other draft legislation. The Division has also developed awareness-raising initiatives to support efforts to ensure, inter alia, women's right to equal access to justice, in which a number of civil society actors and other stakeholders actively participated.

2. Amazigh, Tabu and Tuareg communities

13. In the context of ensuring inclusion and attention to all segments of Libyan society, the rights of the Amazigh, Tabu and Tuareg communities have been prominent in the political debate and reform initiatives since the conflict. According to the Ministry of Foreign Affairs and International Cooperation, the three communities represent less than 4 per cent of the population, although estimates provided by these communities are higher. Many among these communities also consider themselves indigenous peoples. In July 2013, the General National Congress adopted Law 18 in response to concerns raised by these communities. Law 18 recognizes the languages of the three communities as "linguistic and cultural components of Libyan society" and requires the State to support, promote and protect their cultural and linguistic heritage. In addition, the electoral law for the 60-member Constitution Drafting Assembly was adopted by the Congress in July 2013 and provided for equal representation from the three historical regions of Libya; namely Tripolitania, Fezzan and Cyrenaica. Two seats were reserved for each of the Amazigh, Tabu and Tuareg communities However, at the time of writing, groups from these communities objected to the law on the grounds that it did not offer sufficient guarantees to protect their rights.

14. Staff ofthe Human Rights, Transitional Justice and Rule of Law Division have been meeting regularly with representatives of the Amazigh Supreme Council, the National Tabu Gathering and the Tuareg Supreme Council, in addition to non-governmental organizations (NGOs), human rights defenders and representatives of the General National Congress. The Division has also advocated for the formation of an inclusive Constitution Drafting Assembly, reflecting the fair participation of all communities, and provided advice and training on international human rights law to ensure it is applied to all communities without discrimination.

3. Children

15. Hundreds of children were directly or indirectly exposed to violence, and some directly involved, in the conflict in 2011. Limited efforts have been made thus far to respond to significant psychosocial needs. While UNSMIL has not received credible reports of the recent participation of children in armed brigades, it has documented a number of other grave violations committed against children, including the killing of children during political and other violence and also violations related to the detention of national or migrant minors with adults without due process.

16. The Human Rights, Transitional Justice and Rule of Law Division works closely with the United Nations Children's Fund (UNICEF) in monitoring violations of the rights of children. It contributes to the annual report of the Secretary-General on Children and Armed Conflict[3] and reports relevant violations to the Security Council by way of the global horizontal note coordinated by the Special Representative of the Secretary-General for Children and Armed Conflict.[4] The Division has provided advice on the formulation of model constitutional articles related to the protection of children for submission to the Constitution Drafting Assembly. The Division and UNICEF have also closely cooperated on initiatives seeking to further build the capacity of Libyan NGOs working on child protection issues and have supported Government initiatives related to child protection. In addition, UNSMIL, with UNICEF and the Office of the United Nations High Commissioner for Refugees (UNHCR), convened a United Nations-Government task force to improve coordination in addressing, inter alia, the protection of children, especially those affected by conflict.

4. Internally displaced persons

17. As a result of the conflict in 2011, almost 60,000 persons from a number of groups, such as the Tawergha, Mashashiya and Gualish, the Jaramla in Dirj, the S'ian in Zigzaw, the Tabu in al-Kufra and the Tuareg in Ghadames, remain internally displaced.[5] The inhabitants of the town of Tawergha are the largest group, totalling about 30,000.[6] They were forcibly displaced from their town in August 2011 by armed brigades from Misrata, following allegations of grave human rights abuses committed in Misrata by pro-Qadhafi forces from Tawergha. Members of armed brigades from Misrata have carried out raids against camps for internally displaced persons from Tawergha, resulting in unlawful killings and arbitrary arrests. The local council of Tawergha decided not to proceed with a unilateral return to the town originally scheduled for June 2013, following a commitment by the Government to develop a plan for their return and to improve their living conditions in the meantime. An overall strategy to ensure the return of the Tawergha communities and all other displaced communities to their homes is not yet in place.

18. UNSMIL has provided capacity support to the Office of the Prime Minister on issues related to internally displaced persons, including humanitarian relief to vulnerable groups. The Human Rights, Transitional Justice and Rule of Law Division has advocated for an overall strategy to ensure the return of the displaced in dignity and safety, which

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[3] See, for example, A/67/845–S/2013/245, paras. 80–85.

[4] The mandate of the Special Representative addresses six grave violations, specifically the killing or maiming of children, the recruitment or use of children as soldiers, sexual violence against children, attacks against schools and hospitals, denial of humanitarian access for children and abduction of children. For more information see http://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf.

[5] See UNHCR Libya fact sheet available from http://www.unhcr.org/4c907ffe9.html.

[6] Ibid.

would include transitional justice measures addressing, inter alia, the need to establish the facts on the events relating to Misrata and Tawergha as a necessary step towards the resolution of the dispute between the two communities. The Division has also provided advice for a proposed national conference on internal displacement in Libya organized by the Government, which has not yet taken place. The Division will provide further support to the Government in addressing the situation in accordance with the Guiding Principles on Internal Displacement.

5. Migrants, refugees and asylum seekers

19. The situation of migrants remains a major concern. According to the Ministry of the Interior, as of November 2013 there were 4,775 persons held under Law 19 of 2010 in detention centres throughout Libya, including in Ajdabiya, Brak al-Shati', al-Hamra (Gheryan), al-Khoms, Sabratha and Surman. Law 19 of 2010 states that "[t]he foreigner, who is an illegal migrant, is punished by imprisonment with labour or a penalty not exceeding 1,000 [Libyan] dinars. In all cases, the foreigner convicted of one of the crimes enumerated in this law shall be deported ... once the punishment is completed." Conditions in the detention centres are extremely poor, with chronic overcrowding, reports of ill-treatment and forced labour and a lack of basic sanitary and hygiene standards. Moreover, the Libyan authorities have not established a screening mechanism to guarantee the protection of vulnerable individuals, such as children, and limited efforts have been made to address the situation. The Libyan authorities have noted that further resources are required, as well as further international and regional cooperation.

20. UNSMIL is working closely with UNHCR, the International Organization for Migration and other international agencies in advocating for the rights of migrants, refugees and asylum seekers and participating in joint monitoring visits to the detention centres. UNSMIL has also worked closely with the United Nations Office on Drugs and Crime (UNODC) in providing training for police officers which covered, inter alia, the protection of the rights of smuggled migrants and the importance of not conflating migration issues with the fight against the trafficking of persons and transnational criminal networks. The Human Rights, Transitional Justice and Rule of Law Division will continue to follow the situation and provide advice to the authorities on addressing issues relating to the promotion and protection of the rights of migrants, refugees and asylum seekers.

B. Administration of justice

1. Detention related to the 2011 conflict

21. The situation of conflict-related detainees remains a critical concern in urgent need of resolution. According to the Ministry of Justice, as of the end of December 2013, fewer than 7,000 such detainees were held across the country, mostly by armed brigades, without any proper judicial process. Since 2012, the Government has sought to bring armed brigades involved in detentions under the official authority of the State by affiliating them to specific ministries, even though in many cases the armed brigades have retained actual control of the detention centres.

22. On 1 October 2013, OHCHR and UNSMIL issued a joint report describing the treatment of detainees in Libya.[7] The reports sets out how prolonged detention and interrogation at the hands of armed brigades without experience or training in the handling of detainees, as well as the lack of effective judicial oversight or accountability, has created

[7] Available from http://www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf.

an environment conducive to torture or other ill-treatment. In contrast, when detention facilities have been handed over to trained officers of the Judicial Police (the prison service of Libya), there have been marked improvements in the condition and treatment of detainees. The report found that torture is widespread and most frequent immediately after arrest and during the first days of interrogation to extract confessions and other information. Detainees are usually held without access to lawyers and with only occasional, if any, access to families. The report recorded 27 cases of death in custody since 2011, of which 11 took place in 2013, for which significant information suggests that torture was the cause of death. The report also noted the measures taken by the Libyan authorities to address arbitrary detentions and torture, such as the adoption of a law in April 2013, criminalizing torture, enforced disappearances and discrimination, which provided for terms of imprisonment ranging from five years to life depending on the harm caused.

23. The Human Rights, Transitional Justice and Rule of Law Division has paid particular attention to the situation of female detainees and knew of approximately 80 female inmates held in five prisons or detention facilities as of November 2013. The majority were detained without due process in connection with the conflict. Female detainees have raised a number of concerns relating to the lack of female guards, the access of male guards to their cells and the lack of specialized health care. Several female detainees stated that they had been sexually harassed during detention in their cells or during interrogation.

24. The screening process and the investigation of conflict-related detainees have been a major challenge for the public prosecution. Despite progress made in this regard in Misrata and Zawiya, thousands of detainees are still awaiting judicial process. The recently promulgated Law on Transitional Justice provides for a deadline of 90 days from its promulgation to complete the screening process, whereby detainees would be either charged or released. However, given the lack of State control of the majority of detention facilities, in conjunction with security issues and capacity constraints, the judicial system faces a significant challenge in successfully meeting such a deadline.

25. In August 2013, a new State prison, the al-Jawwiyah Institution for Correction and Rehabilitation, was inaugurated in Misrata. Conditions at the prison are a marked improvement on many other detention facilities in Libya. The opening of the prison is an important step forward in enabling the handover of detainees to a prison under full control of the authorities.

26. During the course of 2013, staff of the Human Rights, Transitional Justice and Rule of Law Division visited over 30 detention centres, mostly in western Libya, where the largest concentration of detainees is found. Through this monitoring work, the Division notified the Libyan authorities of relevant issues and specific cases requiring attention. It also made a number of recommendations, which led to interventions by the Ministry of Justice and an improvement of the human rights situation in specific detention centres. For example the situation in the Majer Correction and Rehabilitation Institution in Zlitan was considerably improved following such an intervention in July 2013.

2. The judiciary

27. Under the Qadhafi regime, a parallel judicial system was used as a tool of political repression, most often through the State security courts, where the rights of the accused were routinely violated, even in instances where these rights were guaranteed in Libyan law. In addition, judges, prosecutors, State lawyers and members of the legal department in the Government constituted one single corps and the practice of appointing judges to other non-judicial legal positions within the corps was often used by the regime to punish or intimidate judges known for their integrity and independence. This practice was in violation of the principle of independence and irremovability of judges. Accordingly, the Human

Rights, Transitional Justice and Rule of Law Division has called for the independence and competence of the judiciary to be strengthened through reform of the composition of the Supreme Judicial Council and enhanced integrity and accountability, as laid out in the Bangalore Principles of Judicial Conduct.

28. After the revolution, the Supreme Judicial Council abolished the State security courts and the Constitutional Declaration issued by the National Transitional Council in 2011 forbade the establishment of special courts and provided for the right of appeal for administrative decisions. The Government has also carried out a number of important initiatives to reform the judiciary and enhance its independence. In May 2013, the General National Congress amended the law on the status of the judiciary to allow for the election by peers of 11 out of 13 members of the Supreme Judicial Council. The law also provides for the Prosecutor General and the head of the Judicial Inspection to be ex officio members of the Supreme Judicial Council. In June 2013, the Supreme Judicial Council elected its President and is now considering proposals to further advance judicial reform.

29. In a further welcome step, the Congress adopted a law abolishing the jurisdiction of military courts over civilians in April 2013. In addition, a law establishing a specialized administrative justice order and a constitutional court is being prepared. This reform aims to increase the ability of citizens to challenge administrative decisions and laws.

30. Ensuring a safe environment for judges and prosecutors is a fundamental necessity for the effective administration of justice. The security apparatus of the Government and the Judicial Police in particular does not yet have sufficient capacity, training or equipment to ensure the security of judicial officials. Prosecutors and judges are frequently subjected to intimidation and assaults. Prosecutors ordering the release of former regime members or the arrest of members of armed brigades are the primary target of such attacks and threats. On 6 December 2012, the Prosecutor General was assaulted by members of an armed brigade in his office for having issued an arrest warrant against one of its members. In 2013, a number of senior judges were assassinated. The most senior judge and prosecutor of the Green Mountain region were both assassinated in Derna in 2013. The bombing of the North Benghazi Court in August 2013, which followed several similar bombings in Derna and Sirt, further highlighted the vulnerability of the judiciary. In addition, armed brigades besieged the Ministry of Justice on two separate occasions in 2013. In response, judges organized a series of strikes to protest against the lack of security. This lack of security has impeded the effective investigation of human rights abuses, such as widespread torture in detention and other grave incidents, including the series of assassinations continuing in Benghazi and the violence against peaceful protesters which took place on 15 November 2013 in Tripoli.

31. The Human Rights, Transitional Justice and Rule of Law Division has been working closely with the High Judicial Institute, which leads on the training of judges and prosecutors. The Institute had already worked with the United Nations Development Programme (UNDP) and UNODC on updating the training curricula before the revolution and has since intensified its programme with the assistance of the Division. In association with the institute and in cooperation with the Ministry of Justice, the Division organized five training workshops for judges and prosecutors in 2012 and 2013 on the screening of detainees, the preparation of prosecutorial strategies, the investigation of conflict-related and post-conflict crimes and the application of international human rights and rule of law standards. Each workshop was attended by between 25 and 30 judges and prosecutors from different regions of Libya. The Division raised awareness of international human rights instruments and facilitated the sharing of comparative experiences, contributing to enhancing the capacity of Libyan judges and prosecutors.

32. The Division has also worked closely with the Office of Human Rights and Humanitarian Law of the Ministry of Defence by providing advice and organizing two

workshops in April and September 2013 on the reform of the military justice system, with a view to harmonizing governing principles with international human rights and rule of law standards and identifying capacity-building needs.

33. In addition, it has participated in a number of seminars organized by the Libyan Bar Association, the Libyan Judges Association and the Libyan Lawyers Association through delivering presentations and distributing awareness-raising booklets on human rights issues. The seminars discussed international best practices on, and comparative experiences of, enhancing access to justice for citizens.

34. In advance of the national elections in 2012, the Division organized four workshops in April and May 2012 involving over 100 judges assigned to settle election disputes. Over 40 such disputes were adjudicated in a manner generally considered to be in line with international standards.

3. The Judicial Police

35. Operating under the authority of the Ministry of Justice, the Judicial Police have broad responsibilities, including managing prisons, enforcing court decisions, securing courts and apprehending fugitives. The Government is in the process of integrating 10,000 members of the armed brigades into the ranks of the Judicial Police but significant obstacles remain, including the lack of a robust vetting process and an ongoing need to streamline the decision-making process within the department.

36. Recurrent cases of prison riots and escapes have underlined existing capacity gaps and a shortage of equipment. Break-outs took place from Sabha prison in March, April, June and November 2013, resulting in the escape of approximately 200 prisoners. In July 2013, armed men attacked al-Kweifiya prison in Benghazi. According to the Ministry of Justice, 1,169 prisoners escaped, including approximately 500 prisoners charged with murder and other serious crimes. However, the authorities succeeded in capturing a number of the escapees.

37. The leadership of the Judicial Police is keen to establish a professional corrections service with specialized officers, including in the areas of registry and data management, physical and mental health care and vocational training. To achieve this, a plan has been formulated to provide training to all officers upon recruitment and throughout their careers, through an independent Libyan training institute based in Tripoli and Gernadah, al-Baida.

38. The Human Rights, Transitional Justice and Rule of Law Division has provided advice and training to the Judicial Police on its structure, management and operational standards and meets regularly with its senior management to follow up on continuing technical support. Since October 2012, the Division has been working closely with the planning department of the Judicial Police on the preparation of a comprehensive prison reform strategy. In December 2012, it organized a high-level seminar which brought together the Ministries of Justice, Interior and Health, as well as the Judicial Police and the Prosecutor General, to discuss interministerial support for prison reform. In December 2013 in Tripoli, the Division, jointly with the Judicial Police, organized a meeting of all prison directors in Libya, providing them with an opportunity to share information and discuss with each other ways to overcome existing challenges. The meeting adopted recommendations aimed at strengthening the Judicial Police and harmonizing management approaches in Libyan prisons.

39. In June 2013, the Division submitted a proposal for the organizational restructuring of the Judicial Police after close consultation with relevant officials. During these consultations, the Division conducted assessments and capacity-building visits to several correction and rehabilitation institutions. In August 2013, it provided advice to the Ministry of Justice on its plan to develop a new security and operations unit for prisons and courts.

40. The Division is also working with the Judicial Police on reviewing internal regulations to ensure respect for international human rights standards and is providing technical assistance on enhancing prison security. Between January and April 2013, it delivered three training workshops for approximately 60 Judicial Police officers based in prisons in Tripoli and for 20 Judicial Police officers in a prison in al-Zawiya. It also visited the Gernadah training centre in February 2013 to deliver a number of "train the trainer" courses and provide advice on the organizational structure and training programme of the centre. This support significantly contributed to improving the knowledge of human rights standards of Judicial Police officers. In March 2013, the Division also proposed a draft training strategy for the Judicial Police.

C. Transitional justice

1. Law on Transitional Justice

41. On 2 December 2013, the General National Congress promulgated Law 29 of 2013 on Transitional Justice, repealing a previous law on transitional justice. The new law represents the most important development in this field in Libya thus far.

42. The Human Rights, Transitional Justice and Rule of Law Division provided advice to the Libyan authorities[8] and held expert workshops and events in several cities, including in Misrata, Benghazi and Sabha,[9] as part of its work to assist with the development of a comprehensive transitional justice strategy. It also provided extensive comments on the draft law, including comments which were incorporated into it, such as those relating to the establishment and functioning of a new truth commission and of a separate reparations body.

2. Truth-seeking

43. The Law on Transitional Justice provides for the establishment of the Fact-Finding and Reconciliation Commission, which will address human rights violations committed under the former regime and since its fall. The Commission succeeds its predecessor established under the previous law, which has remained largely inactive. The Commission is mandated to, inter alia, set out a complete picture of the nature, reason and scope of the human rights violations committed; address the situation of displaced persons, missing persons, and detainees; and decide upon reparations for victims. It will be headed by a board of nine members appointed by the General National Congress. It will operate for four years, with the possibility of a one-year extension, and will submit to the Congress a final report with recommendations.

44. In June 2013, the Congress ordered the establishment of a committee to investigate the killings in the Abu Salim prison in 1996. The proposed decree was revised and adopted as Law 31 of 2013 in December 2013. The Congress also passed a decree establishing a committee to identify the causes of a land conflict in the western mountains.

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[8] See for example, the report "Transitional justice – foundation for a new Libya", UNSMIL, 17 September 2012 (available from http://www.unsmil.unmissions.org/LinkClick.aspx?fileticket=8XrRUO-sXBs%3D&tabid=3543&language=en-US).

[9] See for example the recommendations of the conference on truth and reconciliation held in Tripoli on 12-13 Dec. 2012 (available from http://www.unsmil.unmissions.org/Default.aspx?tabid=5292&ctl=Details&mid=9097&ItemID=807652&language=en-US).

3. Reparations

45. The Law on Transitional Justice also establishes the Victims' Compensation Fund and provides for reparations, including compensation for material damage, memorialization, treatment and rehabilitation. Since the revolution, a number of reparations programmes have been established, such as the provision for compensation to former political prisoners under Law 50 of 2012. Under this law, all former political prisoners will be provided with 8,000 Libyan dinars for each month spent in prison between 1 September 1969 and 12 February 2011. Other forms of reparation which have been established by decree or law include the provision of pensions to the families of the missing and killed and compensation for the families of those killed in the Abu Salim prison. There are also legislative and other proposals for compensation and rehabilitation for victims of sexual and gender-based violence and further reparations for victims of the killings in the Abu Salim prison in 1996 and other groups of victims. Finally, a draft law to redress property grievances arising from the policies of the Qadhafi regime is under discussion.

46. Given the grave human rights abuses which took place over the previous four decades and the legacy of selective subsidies and compensation schemes put in place during the Qadhafi regime, crafting viable reparations programmes will be a challenging task for the authorities. In addition, the risk of inconsistent approaches to, or discrimination between, different categories of victims remains.

47. The Human Rights, Transitional Justice and Rule of Law Division has been working closely with the Ministry of Justice, the General National Congress, other Libyan authorities and victims' groups to ensure the adoption of a comprehensive approach to reparations. In this regard, the Division will pay particular attention to the situation of women, especially those who have suffered sexual violence, and minority groups.

4. Criminal justice

48. A number of trials of senior former regime officials are currently taking place against a backdrop of security issues affecting the safety of prosecutors and judges and courts which are not fully functioning. In May 2013, former Prime Minister al-Baghdadi al-Mahmoudi was charged with incitement to kill and corruption. Saif al-Islam Qadhafi is currently being tried in Zintan for national security offences relating to his alleged escape attempt during a visit by officials of the International Criminal Court in 2012. Two other former Qadhafi officials on trial in connection with the misuse of public funds relating to the Lockerbie compensation awards were acquitted in Tripoli in June. The former Minister of Education and Information and five other former regime officials were sentenced to death by the criminal court (*Cour d'Assises*) in Misrata in July 2013 for inciting violence and the killing of demonstrators. Concerns have been raised with respect to the conduct of the trials in compliance with international human rights standards, including in relation to access to defence counsel. There are no reports of death sentences being carried out since the revolution.

49. In October 2013, the Chamber of Accusation of the South Tripoli Court endorsed the indictment of 37 high-level figures of the former regime, including Saif al-Islam Qadhafi and former chief of intelligence Abdullah al-Senussi. They are charged with crimes relating to the 2011 conflict and their trial is expected to take place during 2014.

50. The Human Rights, Transitional Justice and Rule of Law Division has advised the Prosecutor General on the need to adopt a prosecutorial strategy for dealing with the crimes of former regime members as well as those committed during the conflict. In this regard, the Division has focused some of the above-mentioned workshops organized with the High Judicial Institute on the development of prosecutorial strategies and on raising awareness of international human rights and rule of law standards.

51. The Division will work further with Libyan judges to provide advice and capacity-building support to increase their understanding of the international human rights instruments ratified by Libya and their direct application in the national legal system. In addition UNSMIL intends to observe selected trials in order to provide advice and recommendations on further reforms and training required.

5. Processes of the International Criminal Court

52. On 26 February 2011, the Security Council adopted resolution 1970 (2011) in which it decided to refer the situation in Libya to the Prosecutor of the International Criminal Court and further decided that the Libyan authorities should cooperate fully and provide any necessary assistance to the Court and the Prosecutor. On 27 June 2011, the Court issued arrest warrants and requested the transfer of Abdullah al-Senussi and Saif al-Islam Qadhafi, as well as the late Muammar Qadhafi, to The Hague.[10] The Libyan authorities have challenged the admissibility of the cases.

53. In May 2013, the Pre-Trial Chamber of the Court rejected the admissibility challenge by Libya in the case of Saif al-Islam Qadhafi.[11] Libya subsequently appealed this decision. With regard to the admissibility challenge filed by Libya in the case of Abdullah al-Senussi, the Pre-Trial Chamber decided that the case was inadmissible before the court under Article 17(1) (a) of the Statute.[12] Abdullah al-Senussi's defence counsel has appealed against this decision.

6. Institutional reform

54. The approach of the Libyan authorities to vetting and institutional reform is an area of concern. There has been very limited vetting of new members of institutions, such as the armed forces, police, judiciary and Judicial Police. In contrast, strong exclusionary measures have been taken against those who served under the Qadhafi regime and they are not compliant with international human rights standards in a number of aspects.

55. One such measure is the Law on Political and Administrative Isolation which was adopted by the General National Congress in May 2013. The law, which is applicable for 10 years, lists a wide range of political, administrative and other positions, as well as types of affiliation and conduct, as a basis for excluding individuals from public life. While the law provides for certain due process guarantees, including the right to appeal to administrative courts and the Supreme Court, it contains criteria which are vague, far-reaching and disproportionate and therefore likely to violate the human rights of the individuals concerned. Exceptions to the law were considered but ultimately rejected. One example of the shortcomings of the law relates to Mohammad El-Magariaf who decided to resign as President of the Congress in anticipation of the application of the law to him. He had previously been the Libyan Ambassador to India – one of the positions affected by the law – before leaving the country and engaging in over three decades of active opposition to the Qadhafi regime.

56. A number of challenges to the constitutionality of the law were submitted to the Constitutional Chamber of the Supreme Court, including one by the National Council for Civil Liberties and Human Rights. The Supreme Judicial Council, charged with the

[10] See decision on the Prosecutor's application pursuant to Article 58 as to Muammar Mohammed Abu Miyan Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi, No. ICC-01/11, dated 27 June 2011, available from http://www.icc-cpi.int/iccdocs/doc/doc1101337.pdf.

[11] See http://www.icc-cpi.int/iccdocs/doc/doc1599307.pdf.

[12] See decision on the admissibility of the case against Abdullah Al-Senussi, No. ICC-01/11-10/11, dated 11 October 2013, p. 152, available at http://www.icc-cpi.int/iccdocs/doc/doc1663102.pdf.

application of the law to the judiciary, has proposed amendments to the law to mitigate its impact on the judiciary. Judges and prosecutors took strike action in June 2013, anticipating that the law would further undermine an already weak judiciary. It should be noted that the Libyan armed forces are also subject to another stringent vetting process implemented by the Integrity and Army Reform Commission.

57. Before the adoption of the Law on Political and Administrative Isolation, the Human Rights, Transitional Justice and Rule of Law Division had advised the General National Congress on international standards for vetting State institutions and the risks of exclusionary measures. This advice was largely not taken into account.

7. Missing persons

58. Thousands of persons remain missing following the 2011 conflict, in addition to those forcibly disappeared under the Qadhafi regime. As at December 2013, 2,644 missing persons were registered with the Ministry of the Affairs of the Families of Martyrs and Missing Persons. In June 2013, the Ministry prepared a draft law to address the issue of missing persons and enforced disappearances. On 22 December 2013, the General National Congress adopted a law for the families of those killed or missing during the revolution. The law, which provides pensions and benefits such as medical care, government employment and symbolic reparation to the families of those killed or missing in this context, explicitly excludes those who opposed the revolution. It also establishes a commission affiliated with the Council of Ministers to search for and identify the missing.

59. In order to address the issue of missing persons, the Human Rights, Transitional Justice and Rule of Law Division has provided advice to the technical committee responsible for drafting the law. It has also provided advice to support an assessment conducted by Physicians for Human Rights[13] and endorsed the resulting recommendation to create an independent commission to address comprehensively the issue of missing persons. A commission such as this was in place before the creation of the Ministry of the Affairs of the Families of Martyrs and Missing Persons. In addition the Division has provided advice and support to the association of families of the victims of the killings in the Abu Salim Prison in 1996.

D. National human rights bodies

1. The National Council for Civil Liberties and Human Rights

60. In December 2011, the National Transitional Council established the National Council for Civil Liberties and Human Rights as the national human rights institution of Libya. However, due to a lack of allocated staffing and financial resources, the Council only effectively began operating in January 2013. It is encouraging to note that it is now fully staffed and space has been secured for its ongoing operations. The Human Rights, Transitional Justice and Rule of Law Division has provided advice, training and technical resources to the Council and referred several cases to it. Upon request, the Division has also recruited a dedicated adviser who is providing technical support to the Council to facilitate its conformity with the Principles relating to the Status of National Institutions (the Paris Principles).

[13] Physicians for Human Rights, "Libyan human identification needs assessment and gap analysis" (Washington, D.C., 2013), available from physiciansforhumanrights.org/library/reports/libyan-human-identification-needs-assessment-and-gap-analysis.html.

2. The standing committees of the General National Congress

61. The General National Congress has a number of standing committees, including a Legislative and Constitutional Committee charged with elaborating legislative drafts and a Human Rights Committee. The Human Rights, Transitional Justice and Rule of Law Division has engaged with the committees on issues relating to legislation, transitional justice, capacity-building, raising human rights awareness and strengthening engagement with civil society. It has also provided advice on international human rights mechanisms and obligations and coordinated meetings between the Human Rights Committee of the Congress and relevant United Nations agencies such as UNICEF. The Division has also provided technical advice to support, and participated in, the first forum for human rights organizations in Libya organized by the Human Rights Committee of the Congress in April 2013; it is currently supporting the committee in planning a media campaign to raise awareness of human rights amongst the Libyan public.

3. Civil society

62. Civil society was repressed during the Qadhafi era and is now slowly beginning to be established. In this regard, the Human Rights, Transitional Justice and Rule of Law Division has engaged with civil society organizations and human rights defenders through providing training courses and advice on engaging with international human rights mechanisms and the role of the media in the protection of human rights. The Division has organized workshops in several locations throughout the country, such as Tripoli, al-Khoms and al-Zawiya, on themes including the obligations of Libya under international human rights law and has distributed human rights education literature to the civil society community across the country. It has also provided substantive advice and support to the organization of a major two-day human rights conference held in al-Baida in May 2013. A number of civil society representatives and high-level officials attended the conference to discuss the protection and promotion of human rights in Libya.

E. Legal reform

63. The Libyan penal code and the code of criminal procedure, in addition to other legislation, include gaps and provisions that are not in line with international human rights standards. For example, Libyan legislation does not criminalize genocide, war crimes or crimes against humanity. The death penalty is prescribed for a broad range of offences, including offences which do not meet the threshold of "most serious crimes" under international human rights law.[14]

64. The Human Rights, Transitional Justice and Rule of Law Division continues to provide advice to the General National Congress on laws adopted or under discussion since the conflict and is supporting the review of the Libyan penal code and code of criminal procedure with respect to their compliance with international human rights standards. This review was identified by the Government of Libya as a priority at the ministerial meeting in Paris in February 2013, however progress has been limited to date. The Division is coordinating closely with UNDP, UNODC, the Ministry of Justice, the High Judicial Institute, the Congress, academics and civil society to support the review, ensure national ownership of it and strengthen national capacity to conduct similar reviews in the future.

[14] Article 6, paragraph 2, of the International Covenant on Civil and Political Rights prescribes that in States that have not abolished it, the death penalty may only be imposed for the "most serious crimes". This term has been interpreted to mean that the death penalty should only be applied to the crimes of murder or intentional killing. See A/HRC/24/18, para. 24.

65. The Division will also continue to monitor the constitution-making process and will seek to provide advice and drafting assistance, in association with other entities of the United Nations, to the Constitution Drafting Assembly once it is elected and operational. In December 2013, the Division organized two workshops to facilitate discussion of human rights and the constitution: the first jointly with the National Council for Civil Liberties and Human Rights and the Office of Human Rights and International Humanitarian Law at the Ministry of Defence and the second with the Human Rights Committee of the General National Congress. The Division will continue to organize workshops and training sessions to further build the capacity and aid the participation of civil society organizations representing all segments of Libyan society, including women, minorities and displaced persons, in the constitution-making process.

IV. Recommendations

66. **The United Nations High Commissioner for Human Rights recommends that the Government of Libya, through capacity-building and technical assistance support:**

(a) Comprehensively review and strengthen protections in law and policy to guarantee the rights of women, minorities, migrants, refugees and children. All necessary measures should be taken to facilitate greater access to justice for these groups. In addition, legislation should be adopted and operational policies and procedures put in place to combat sexual violence and provide effective redress to victims;[15]

(b) Develop a comprehensive strategy to address the issue of all persons displaced since 2011, ensuring that their right to return to their homes in safety and with dignity is guaranteed, whilst providing them with protection and humanitarian assistance in the interim, in accordance with the Guiding Principles on Internal Displacement;

(c) Urgently address the situation of persons deprived of their liberty, with due regard to the situation of female detainees through, inter alia, accelerating the process of handing over all detention facilities from the armed brigades to the effective control of State authorities and investigating allegations of torture or other ill-treatment, including sexual harassment, and bringing to justice those responsible. Safeguards against torture and other ill-treatment should be put in place in all prisons and detention facilities in line with Libyan law, the Standard Minimum Rules for the Treatment of Prisoners and other relevant international human rights standards. Persons deprived of their liberty should be allowed to receive regular visits from their families and visits from their lawyers in full confidentiality. The National Council for Civil Liberties and Human Rights and relevant international organizations should also be afforded access in accordance with their mandates;

(d) Strengthen the capacity of State institutions, such as the judicial system and the Judicial Police, to uphold the rule of law through, inter alia, enhancing the security for prosecutors, judges and the courts through close cooperation between the Ministries of Justice, Interior and Defence. A prosecutorial strategy should be developed to address crimes committed under the former regime, as well as those committed since the revolution, and the capacity of prosecutors and judges to handle

[15] Such procedures and policies would include telephone hotlines, provision of psychological support, establishment of victim rehabilitation centres and implementation of awareness-raising programmes to combat discrimination against victims.

complex crime investigations should be enhanced. A fair vetting and recruitment process for the Judicial Police and other detaining agencies should be established. Proper resources and training to ensure the effective management of prisons in line with international human rights standards should also be provided;

(e) Implement a comprehensive approach to transitional justice through, inter alia, ensuring the appointment of qualified and independent members of the Fact-Finding and Reconciliation Commission, taking into account gender issues and ensuring the coordination of all truth-seeking initiatives. Full and effective reparations should be provided in a fair, consistent and gender-sensitive manner and without discrimination. The Law on Political and Administrative Isolation and related vetting legislation and policies should be reviewed to ensure that vetting criteria and the process for their application are precise, proportionate and fair. Any commission for missing persons should be independent and impartial, with the resources and authority to search for and identify all missing persons, regardless of affiliation, and take the necessary measures to support their families. All necessary measures should be taken to ensure a safe environment, free of intimidation, for the trials of members of the former regime and members of the armed brigades, whilst ensuring accordance with internationally recognized fair trial standards;

(f) Develop a robust legal framework for the promotion and protection of human rights by ensuring that the constitution and national legislation are fully compliant with international human rights standards, including by completing the comprehensive review of the penal code, the code of criminal procedure and other legislation. An inclusive, consultative and transparent constitution drafting process should be carried out, with the full participation of all sections of Libyan society, including those representing women, indigenous peoples and minorities, with the aim of adopting a constitution that safeguards dignity, non-discrimination, equality and human rights for all;

(g) Take all necessary steps to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearances, the 1951 Convention relating to the Status of Refugees and its Optional Protocol and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and withdraw all of its reservations to the Convention on the Elimination of All Forms of Discrimination against Women;

(h) Establish a moratorium on the use of the death penalty, aiming to abolish it. Pending abolition, ensure full compliance with the restrictions prescribed in particular in article 6 of the International Covenant on Civil and Political Rights, including by limiting the use of the death penalty only to the most serious crimes and by ensuring scrupulous respect of due process guarantees, including fair trial guarantees in capital cases.

67. The United Nations High Commissioner for Human Rights further encourages the implementation of the recommendations set out in the report of the International Commission of Inquiry on Libya.